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8 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE
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10 JOHN GIRGIS, an individual,

11 Plaintiff,

12 v.

13 IKON OFFICE SOLUTIONS, INC., a foreign
corporation, and CLINT PHILLIPS, an
individual,

15 Defendants.

NO. C10-525RSL

ORDER FOR REMAND TO STATE
COURT

16 This matter comes before the Court on plaintiff's motion for remand to state
17 court (Dkt. # 11). Having considered the materials submitted and the pleadings and
18 papers on file, the Court hereby GRANTS plaintiffs' motion.

19 **A. Fraudulent Joinder**

20 To succeed in removing a case for "fraudulent joinder," defendants must show
21 by clear and convincing evidence that the plaintiff has failed to state a proper cause of
22 action against non-diverse defendant Clint Phillips and that "the failure is obvious
23 according to settled rules of the state." Ritchey v. Upjohn Drug Co., 139 F.3d 1313,
24 1327 (9th Cir. 1998). Defendants cite no settled law making obvious plaintiff's failure
25 to state a claim. Because there is a non-fanciful possibility that plaintiff states a claim
26 under Washington law against the non-diverse defendant, the Court must remand.

1 See Macey v. Allstate Prop. & Cas. Ins. Co., 220 F.Supp.2d 1116, 1117 (N.D. Cal.
2 2002). Plaintiff's motion is GRANTED.

3 **B. Fees**

4 Removal here was plainly improper and the expense should be borne by
5 defendants pursuant to 28 U.S.C. § 1447(c). Defendants are ORDERED to pay
6 plaintiff's reasonable fees of \$ 4,515.¹

7 DATED this 28th day of May, 2010.

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10 Robert S. Lasnik
11 United States District Judge
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¹ This figure represents the \$5,255 reflected in plaintiff's counsel's declarations minus four out of the eight associate hours spent on the reply brief.